



W.P.(MD)No.972 of 2024

WEB CO BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.972 of 2024

and

WMP(MD)No.996 of 2024

S.Robart

... Petitioner

Vs.

1. The Director of Collegiate Education,
Chennai-15.

2. The Joint Director of Collegiate Education,
Tirunelveli.

3. The Principal Accountant General (A & E),
Anna Salai,
Chennai - 18.

4. The Administrator,
(Appointed in the Year 2022),
St.Judge's College, Thuthoor,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution
of India for issuance of Writ of Certiorarified Mandamus, to call for



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the records of the Impugned order in Na.Ka.No.9543/Vu1/2022 dated 23.03.2023 of the 2nd Respondent and quash the same and further directing the Respondent to fix the petitioner's salary and consequently his pension by applying the increment for the period from 31.07.2000 to 28.03.2010 and to promote him notionally as Associate Professor on the completion of fourteenth year of service and to pay the monetary benefits.

For Petitioner : Mr.S.Selva Aditya
For R1 & R2 : Mr.T.Amjadkhan
Government Advocate
For R3 : Mr.P.Gunasekaran
For R4 : No appearance

ORDER

This writ petition has been filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned order of the 2nd Respondent in Na.Ka.No.9543/Vu1/2022 dated 23.03.2023 and consequential direction to calculate his pension by applying the



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increment for the period from 31.07.2000 to 28.03.2010 and to promote him notionally as Associate Professor on the completion of fourteenth year of service and to pay the monetary benefits.

2. Heard Mr.S.Selva Aditya, learned counsel appearing for the petitioner, Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents 1 &2 and Mr.P.Gunasekaran, learned counsel appearing for the 3rd respondent.

3. The petitioner, who was terminated from services for certain lapses on his part has challenged the order by way of preferring a writ petition in W.P.No.7689 of 2002. The said writ petition was allowed and the relevant paragraph is extracted hereunder:

"19. Further, it is also seen that the claims made by the petitioner that the enquiry was not conducted in a fair and proper manner have not been dispelled by the second respondent Management. Fairness in following the procedure shall not only be



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done, but shall also be seemed to be done. The violation of principles of natural justice would vitiate the enquiry, if it is found to be prejudicial to the petitioner. In the present case, the petitioner has brought forth sufficient and cogent reasons to convince this Court to hold that the charges against the petitioner have not been satisfactorily proved following the principles of natural justice. The decisions cited by the petitioner in favour of his claims have also been considered by this Court, while coming to the present conclusion. In such view of the matter, the impugned proceedings of the respondents are set-aside and the respondents are directed to reinstate the petitioner in service, with continuity of service and with 50% of the arrears of salary, calculated from the date of his dismissal from service, within a period of six weeks from the date of receipt of a copy of this order. The writ petition stands allowed accordingly. No costs."

4. Challenging the above order, the 4th respondent management preferred an appeal in W.A.No.1070 of 2007 wherein in paragraph No.14, it has been held as under:

"14. In view of the above said facts, the writ



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appeal stands partly allowed. The observation of the learned single Judge regarding the merit of the charges framed against the first respondent are set aside, but the order of the learned single Judge is confirmed only on the ground of not following the principles of natural justice. It is open to the appellant/management to proceed afresh against the first respondent on the charges leveled against him after following the principles of natural justice and pass orders in accordance with law after giving adequate opportunity to the first respondent without taking into consideration the order of the learned single Judge regarding the merit of the charges leveled against the first respondent. Consequently, M.P.No. 107 of 2007 is closed. No costs."

5. Mr.S.Selva Aditya, learned counsel for the petitioner claims that the order passed in the writ petition itself the learned Single Judge has granted the benefit of continuity of service with 50% back wages but directing the respondent to reinstate the petitioner to service. Accordingly the petitioner got reinstated in service in the year 2010. The period out of employment would fall between the period from 31.07.2000 to 28.03.2010. Hence, the petitioner



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claimed that in the modified order passed in the writ appeal, the relief in respect of continuity of service with 50% back wages and reinstatement has not been disturbed and hence, the petitioner is entitled to count his services between the period from 31.07.2000 to 28.03.2010 for all service benefits including the promotion with all pensionary benefits.

6. Mr.T.Amjadkhan, learned Government Advocate for the respondents 1 &2 submitted that there is no impugned order passed by the respondents affecting any of the rights of the petitioner and it is only a communication between the Joint Director of Collegiate Education and the Directorate of Collegiate Education through which a clarification was sought as to the mode of regularisation of the petitioner's services between the period from 31.07.2000 and 28.03.2010.



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7. However, the learned counsel for the petitioner submitted that in the name of claiming such clarification, the petitioner's pensionary benefits can not be disbursed and hence, the petitioner has got the right to challenge the above communication even though it may not be an order. It is clarified that the order dated 29.01.2007 passed in the Writ Petition in W.P.No.7689/2002 the relief granted was very specific. That is with regard to the reinstatement with continuity of service with 50% back wages. Even that order does not speak about any attendant benefits. Neither the order passed in the writ appeal states anything about the attendant benefits but the order states only about the relief of continuity of service.

8. The petitioner had joined service in the year 1995. He was promoted to the post of Associate Professor after acquiring 14 years of service in the year 2009. However, the petitioner was out of service during the termination period and he got reinstated in the year 2010. The order is also specific about the continuity of service



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and not all other attendant benefits. So it can be construed that the petitioner cannot claim any other benefits than the relief specifically granted to him.

9. It is learnt that the petitioner has been settled with 50% back wages by the management. Even the petitioner does not claim remaining 50% as he is clear in his understanding the benefit granted in the order extends only in respect of the payment made to him. Neither the College management appears to have approached the Government to give grant for the 50% back wages paid by the management to the petitioner during the period when he was out of service. In the absence of any attendant benefits granted to the petitioner, the petitioner at the best can claim service benefits with regard to the promotion or other monetary benefits from the date of his reinstatement and not in respect of the period during which he was out of employment. If the petitioner claims that he has got 14 years of qualified services by virtue of continuity of service granted



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to him in the order granted in the writ petition, the petitioner would have claimed the same during the year 2010 itself, immediately after he got reinstated. The petitioner is aware of the fact that the petitioner cannot include those services for such benefits and he was kept quite till his retirement and after he got retired, he has made a novel plea to grant him Career Assured Progression (CAP) benefit by a promoting him to the post of Associate Professor.

10. Since the respondents have got the doubt about the petitioner's request for promotion to the post of Associate Professor, they sought a clarification with the concerned authority. However, the clarifying authority can consider the services rendered by the petitioner prior to the suspension and subsequent to the suspension for computing the 14 years of service to include the petitioner next level of Associate Professor through Career Assured Progression. However, it is up to the respondents to consider the same and pass orders with the details furnished by the clarifying authority.



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11. However, it is clarified that the petitioner is not deprived to get continuity of service. Though he was not given with any attendant benefits except the terminal benefits, which is a natural corollary attached to continuity of service irrespective of the orders as to the petitioner's eligibility to get promotion, the pensionary benefits accrued as of now, even pending the issue as to the promotion, could have been released to the petitioner.

12. With these observation, this writ petition is **disposed of**.
No Costs. Consequently, connected miscellaneous petition is closed.

08.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
PJJ

To
1. The Director of Collegiate Education,

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WEB COM Chennai-15.

2. The Joint Director of Collegiate Education,
Tirunelveli.

3. The Principal Accountant General (A & E),
Anna Salai,
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R.N.MANJULA, J.

PJL

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